

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN MICHAEL MATELIC,

Plaintiffs,

Case No.: 12-13523

Hon. Avern Cohn

Magistrate: R. Steven Whalen

vs.

BENNY MENDOZA,

Defendants.

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JOHN MICHAEL MATELIC, In Pro Per  
Prisoner # 2012011262  
Wayne County Jail  
525 Clinton Street  
Detroit, Michigan 48226

MICHAEL M. MULLER (P-38070)  
KIMBERLY A. JAMES (P-56410)  
Attorney for Defendants  
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**ANSWER TO COMPLAINT ON BEHALF OF BENNY MENDOZA**

NOW COMES defendant, Benny Mendoza, and for his answer to plaintiff's complaint, states as follows:

1. Benny Mendoza denies each and every implicating allegation in plaintiff's complaint as inaccurate and/or untrue, and further, denies any and all wrongdoing.

**SPECIAL AND AFFIRMATIVE DEFENSES**

1. Plaintiff fails to state a claim against defendant upon which relief may be granted.

2. Any injury suffered by plaintiff was proximately caused by plaintiff's own negligence and other wrongful conduct.
3. Plaintiff has failed to mitigate his damages.
4. To the extent the incident reflected in plaintiff's complaint did not occur on the identified date, and instead occurred at an earlier time, plaintiff's claims are time barred.
5. To the extent it reflects any manner of federal statutory or constitutionally predicated claims against Defendant, Plaintiff's complaint fails to state a claim upon which relief may be granted as Defendant's conduct did not violate any well established statutory or constitutionally predicated right inuring to Plaintiff, and at all times pertaining hereto, defendant acted in good faith and in an objectively reasonable manner under the circumstances confronting them and they are, therefore, entitle to qualified immunity.
6. The arrest of the plaintiff, if any, was supported by probable cause, exigent circumstances and/or a valid warrant.
7. To the extent, if any, that this Defendant or anyone acting at the direction of or in concert with him used force against the plaintiff, each such person acted in self defense.
8. To the extent, if any, that this Defendant or anyone acting at the direction of or in concert with him used force against the Plaintiff, each such use of force was privileged and lawful because the force was reasonably applied in the execution of a lawful arrest or in the lawful performance of other police duties.
9. To the extent any delay in medical treatment did not result in injury more severe or

different in type than would have been otherwise suffered, plaintiff's delayed medical care related claims fail to state a cause of action upon which relief may be granted.

10. To the extent it alleges a violation arising under the Constitution of the State of Michigan, Plaintiff's Complaint fails to state a claim against Defendant upon which relief may be granted.
11. Plaintiff has failed to join every legal or equitable claim arising from the incident central to this suit.
12. Plaintiff's claims are barred by the wrongful conduct doctrine
13. That Defendant is protected from liability on the Plaintiff's state-law claims by governmental or official immunity. MCLA 691.1407(2).

#### **RESERVATION OF ADDITIONAL DEFENSES**

Benny Mendoza in the above captioned matter, by and through counsel, reserves the right to assert and file any affirmative and special defense which may become known by discovery proceedings in accordance with the rules and practices of this Court. Further, Defendants do not waive any deficiency or omission in any pleadings filed by any other party to this suit regardless of when filed.

#### **DEMAND FOR COMPULSORY JOINDER OF CLAIMS**

Benny Mendoza demands Plaintiff join in this action all claims Plaintiff may have against any Defendant arising from the subject matter of this action and which do not require for adjudication the presence of third parties over whom the court cannot exercise jurisdiction.

WHEREFORE, defendant, Benny Mendoza respectfully requests a judgment of no cause of action be entered herein, or in the alternative said cause be dismissed, with prejudice, and costs and attorney fees be awarded to defendant.

/s/Michael M. Muller  
**MICHAEL M. MULLER (P-38070)**  
**Senior Assistant Corporation Counsel**  
2 Woodward Avenue, Ste. 500  
Detroit, MI 48226  
E-mail: mullm@detroitmi.gov  
(313) 237-5052

Dated: February 27, 2013

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**PROOF OF SERVICE**

I hereby certify that on February 27, 2013, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system and deposited in the U.S. mail a copy of such papers directed to plaintiff at the address of record with the court.

**/s/Michael M. Muller**